

Assembly Bill No. 270

CHAPTER 231

An act to amend Sections 5000, 5015.6, 5020, 5061, 5063, 5079, and 5100 of, to add Sections 5000.5, 5063.1, 5063.2, 5103, 5108, 5109, and 5109.5 to, and to repeal and amend Section 5076 of, the Business and Professions Code, relating to accountancy, and making an appropriation therefor.

[Approved by Governor August 23, 2002. Filed with
Secretary of State August 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 270, Correa. Professions: accountancy.

Existing law provides for the licensing and regulation of accountants by the State Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer will become inoperative on July 1, 2006, and will be repealed on January 1, 2007.

This bill would change these dates, making the provisions inoperative on July 1, 2005, and repealing them on January 1, 2006. The bill would increase the number of members on the board from 11 to 15 by increasing the number of public members from 5 to 8 and the licensee members from 6 to 7. The bill would revise the qualification requirements for certain members of the board.

Existing law provides that each board or commission in the Department of Consumer Affairs facing a statutory repeal date has the burden of establishing a compelling need for its continuation to the Joint Legislative Sunset Review Committee. Existing law limits this review in the case of the Board of Accountancy.

This bill would expand that review regarding the Board of Accountancy to include consideration of reports and studies specified in the law regulating accountancy.

Existing law authorizes the board to conduct investigations or hearings relating to any matter involving the conduct of licensees. Existing law authorizes the board to appoint an administrative committee for the purpose of obtaining technical expertise. Existing law authorizes the board to vest this committee with the powers of the board for specified purposes.

This bill would delete the authority to vest the powers of the board in this committee.

Existing law authorizes the board, after notice and hearing, to revoke, suspend, or refuse to renew any permit or certificate, as specified, or to censure the holder of that permit or certificate for unprofessional conduct. Under existing law, unprofessional conduct includes a conviction for a crime substantially related to the qualifications, functions, and duties of a certified public accountant or public accountant, and dishonesty, fraud, or gross negligence in certain duties. Existing law requires, with respect to standards of professional conduct, a licensee to report to the board in writing, within 30 days of the time the licensee has knowledge of certain events concerning the licensee, including the conviction of a crime.

This bill would require a licensee to report other specified events concerning the licensee, including certain civil judgments and settlements, and would authorize the board to adopt regulations to further define certain reporting requirements. It would also require courts and specified insurers and surplus brokers to report certain events to the board. This bill would expand the definition of unprofessional conduct to include repeated negligence indicating a lack of competency and would provide the board with subpoena power and the authority to proceed in an investigation or action in specified circumstances.

Existing law prohibits a person engaged in the practice of public accountancy from performing services for a client for a commission or from receiving a commission from a client when that person also performs specified services for that client.

This bill would include in that prohibition services for a commission for or receiving a commission from, an officer or director of a client or client-sponsored retirement plan.

Existing law provides that unlicensed persons can be minority owners of public accountancy firms, notwithstanding other laws providing for the issuance of permits to practice accountancy only to licensees, if specified requirements are met.

This bill would add the requirement that a licensed firm disclose the actual or potential involvement of nonlicensee owners in services provided.

Existing law requires an applicant for licensure as a certified public accountant to demonstrate experience in the attest function. A firm, other than a sole proprietor or a small firm, is required to meet specified peer review requirements in order to provide attest services and an individual applicant is required to meet specified criteria to sign reports on attest engagements. The board is required to adopt regulations implementing, interpreting, and making specific the peer review requirements.

This bill would require the board to report to the Legislature and the department by September 1, 2003, concerning the peer review program.



This bill would also require the board to report to the Legislature by September 1, 2003, on problems with respect to the policing and disciplining of accountants employed by a large public accounting firm.

Existing law appropriates all moneys in the Accountancy Fund to the board to carry out provisions of the law relating to accountancy.

This bill would make an appropriation because it authorizes the board to expend moneys in the fund for additional purposes.

This bill would incorporate additional changes to Section 5100 of the Business and Professions Code to take effect if this bill and AB 2873 are both enacted and become effective on or before January 1, 2003, and this bill is enacted last.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint Legislative Sunset Review Committee and the board regarding the implementation of new licensing requirements.



SEC. 2. Section 5000.5 is added to the Business and Professions Code, to read:

5000.5. No public member shall be a current or former licensee of the board or an immediate family member of a licensee, or be currently or formerly employed by a public accounting firm, bookkeeping firm, or firm engaged in providing tax preparation as its primary business, or have any financial interest in the business of a licensee. Each public member shall meet all of the requirements for public membership on the board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

SEC. 3. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 5020 of the Business and Professions Code is amended to read:

5020. The board may, for the purpose of obtaining technical expertise, appoint an administrative committee of not more than 13 licensees to provide advice and assistance related to the functions specified in Section 5103. The committee shall act only in an advisory capacity, shall have no authority to initiate any disciplinary action against a licensee, and shall only be authorized to report its findings from any investigation or hearing conducted pursuant to this section to the board, or upon direction of the board, to the executive officer.

SEC. 5. Section 5061 of the Business and Professions Code is amended to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in



this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a client or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

For purposes of this subdivision, “director” means any person as defined under Section 164 of the Corporations Code and “officer” means any individual reported to a regulatory agency as an officer of a corporation.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

(1) Be in writing and be clear and conspicuous.

(2) Be signed by the recipient of the product or service.

(3) State the amount of the commission or the basis on which it will be computed.

(4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.

(5) Be presented to the client at or prior to the time the recommendation of the product or service is made.



(f) For purposes of this section, “fee” includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

SEC. 6. Section 5063 of the Business and Professions Code is amended to read:

5063. (a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

(1) The conviction of the licensee of any of the following:

(A) A felony.

(B) Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy.

(C) Any crime involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

(2) The cancellation, revocation, or suspension of a certificate, other authority to practice or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any other state or foreign country.

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

(1) Any restatement of a financial statement and related disclosures by a client audited by the licensee.

(2) Any civil action settlement or arbitration award against the licensee relating to the practice of public accountancy where the amount or value of the settlement or arbitration award is thirty thousand dollars (\$30,000) or greater and where the licensee is not insured for the full amount of the award.



(3) Any notice of the opening or initiation of a formal investigation of the licensee by the Securities and Exchange Commission or its designee.

(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.

(5) Any notice of the opening or initiation of an investigation by the Public Company Accounting Oversight Board or its designee, as defined pursuant to subdivision (g).

(c) A licensee shall report to the board in writing, within 30 days of the entry of the judgment, any judgment entered on or after January 1, 2003, against the licensee in any civil action alleging any of the following:

(1) Dishonesty, fraud, gross negligence, or negligence.

(2) Breach of fiduciary responsibility.

(3) Preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(4) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses, or other errors or omissions.

(5) Any actionable conduct by the licensee in the practice of public accountancy, the performance of bookkeeping operations, or other professional practice.

(d) The report required by subdivisions (a), (b), and (c) shall be signed by the licensee and set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(e) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(f) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a), (b), or (c) either by or against any other licensee.

(g) The board may adopt regulations to further define the reporting requirements of this section.

SEC. 7. Section 5063.1 is added to the Business and Professions Code, to read:

5063.1. Within 10 days of entry of a conviction described in paragraph (1) of subdivision (a) of Section 5063 or a judgment described in subdivision (c) of Section 5063 by a court of this state, the court that rendered the conviction or judgment shall report that fact to the board and provide the board with a copy of the conviction or judgment and any



orders or opinions of the court accompanying or ordering the conviction or judgment.

SEC. 8. Section 5063.2 is added to the Business and Professions Code, to read:

5063.2. Within 30 days of payment of all or any portion of any civil action settlement or arbitration award against a licensee of the board in which the amount or value of the settlement or arbitration award is thirty thousand dollars (\$30,000) or greater, any insurer or licensed surplus broker providing professional liability insurance to that licensee shall report to the board the name of the licensee, the amount or value of the settlement or arbitration award, the amount paid by the insurer or licensed surplus broker, and the identity of the payee.

SEC. 9. Section 5076 of the Business and Professions Code, as added by Section 2 of Chapter 704 of the Statutes of 2001, is repealed.

SEC. 10. Section 5076 of the Business and Professions Code, as added by Section 5 of Chapter 718 of the Statutes of 2001, is amended to read:

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review prior to the first registration expiration date after January 1, 2006, and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:

(1) “Peer review” means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) “Attest services” include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, “attest services” shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review whether to implement the program specified in this section in light of the changes in federal and state law



or regulations or professional standards, and shall report its findings to the Legislature and the department by September 1, 2003.

SEC. 11. Section 5079 of the Business and Professions Code is amended to read:

5079. (a) Notwithstanding any other provision of this chapter, any firm lawfully engaged in the practice of public accountancy in this state may have owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(1) Nonlicensee owners shall be natural persons or entities, such as partnerships, professional corporations, or others, provided that each ultimate beneficial owner of an equity interest in that entity shall be a natural person materially participating in the business conducted by the firm or an entity controlled by the firm.

(2) Nonlicensee owners shall materially participate in the business of the firm, or an entity controlled by the firm, and their ownership interest shall revert to the firm upon the cessation of any material participation.

(3) Licensees shall in the aggregate, directly or beneficially, comprise a majority of owners, except that firms with two owners may have one owner who is a nonlicensee.

(4) Licensees shall in the aggregate, directly or beneficially, hold more than half of the equity capital and possess majority voting rights.

(5) Nonlicensee owners shall not hold themselves out as certified public accountants or public accountants and each licensed firm shall disclose actual or potential involvement of nonlicensee owners in the services provided.

(6) There shall be a certified public accountant or public accountant who has ultimate responsibility for each financial statement attest and compilation service engagement.

(7) Except as permitted by the board in the exercise of its discretion, a person may not become a nonlicensee owner or remain a nonlicensee owner if the person has done either of the following:

(A) Been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction.

(B) Had a professional license or the right to practice revoked or suspended for reasons other than nonpayment of dues or fees, or has voluntarily surrendered a license or right to practice with disciplinary charges or a disciplinary investigation pending, and not reinstated by a licensing agency of any state, or the United States, or of any other jurisdiction.

(8) A nonlicensee owner of a licensed firm shall report to the board in writing of the occurrence of any of the events set forth in paragraph (7) within 30 days of the date the nonlicensee owner has knowledge of



the event. A conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted. The report shall be signed by the nonlicensee owner and set forth the facts that constitute the reportable event. The report shall identify the event by the name of the agency or court, the title of the matter, the docket number, and the date of occurrence of the event.

(b) For purposes of this section, the following definitions apply:

(1) “Licensee” means a certified public accountant or public accountant in this state or a certified public accountant in good standing in another state.

(2) “Material participation” means an activity that is regular, continuous, and substantial.

(c) All firms with nonlicensee owners shall certify at the time of registration and renewal that the firm is in compliance with this section.

(d) The board shall adopt regulations to implement, interpret, or make specific this section.

SEC. 12. Section 5100 of the Business and Professions Code is amended to read:

5100. After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, or in obtaining a certificate as a certified public accountant or in obtaining registration under this chapter or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation or suspension of a certificate, other authority to practice or refusal to renew the certificate or other authority



to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5120.

(f) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(g) Suspension or revocation of the right to practice before any governmental body or agency.

(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(j) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(k) The imposition of any discipline, penalty or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

SEC. 13. Section 5100 of the Business and Professions Code is amended to read:

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate



a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

SEC. 14. Section 5103 is added to the Business and Professions Code, to read:

5103. (a) Notwithstanding any other provision of law, the board may inquire into any alleged violation of this chapter or any other state or federal law, regulation, or rule relevant to the practice of accountancy.

(b) The board, or its executive officer pursuant to a delegation of authority from the board, is authorized to perform the following functions:

(1) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

(2) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving



any violation or alleged violation of this chapter by licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

SEC. 15. Section 5108 is added to the Business and Professions Code, to read:

5108. In connection with any investigation or action authorized by this chapter, the board may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

SEC. 16. Section 5109 is added to the Business and Professions Code, to read:

5109. The expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

SEC. 17. Section 5109.5 is added to the Business and Professions Code, to read:

5109.5. The board shall report to the Legislature by September 1, 2003, on problems associated with policing and disciplining those accountants who violate Section 5100 or other provisions of this chapter and who are employed by a large public accounting firm. The board shall look critically at their enforcement budget and identify costs of investigation and prosecution of these disciplinary actions and propose ways to cover costs of handling these types of cases.

SEC. 18. Section 13 of this bill incorporates amendments to Section 5100 of the Business and Professions Code proposed by both this bill and AB 2873. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 5100 of the Business and Professions Code, and (3) this bill is enacted after AB 2873, in which case Section 12 of this bill shall not become operative.

